



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Rolette Meats & Distributing Inc.--Request  
for Reconsideration

**File:** B-234383.2

**Date:** August 2, 1989

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### **DIGEST**

Request for reconsideration of prior decision upholding cancellation of a solicitation and a resolicitation because the price of the protester, the sole bidder eligible for award, was unreasonably high, is denied where protester: (1) does not challenge that holding; (2) expresses general disagreement with another aspect of the decision without alleging that it is factually or legally erroneous; (3) pursues a factual matter irrelevant to the legality of the procurement; and (4) reiterates its speculation that the release of certain pricing information to its competitors was not inadvertent as the contracting agency maintains, yet does not dispute prior conclusion that the agency's action did not prejudice the protester because at no time was its price competitive with those otherwise available.

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### **DECISION**

Rolette Meats and Distributing, Inc., requests reconsideration of our decision of June 5, 1989,<sup>1/</sup> in which we denied the company's protest against: (1) the cancellation of an invitation for bids (IFB), restricted to eligible Indian/Alaska Native firms, for the supply of meat products needed by a community Indian school system; and (2) the award to another firm of a contract under a subsequent, unrestricted solicitation for the supply of these products.

We deny the request for reconsideration.

Rolette and two other firms (Cloverdale and Quality) submitted bids under the original solicitation. The contracting officer states that he opened the bids and determined that the bids of Cloverdale, the prior year's

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<sup>1/</sup> Rolette Meats & Distrib., Inc., B-234383, June 5, 1989,  
89-1 CPD ¶ \_\_\_\_.

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contractor, and Quality should be recorded as "nonresponsive," and their prices not entered on the bid abstract, since these bidders did not represent themselves to be Indian/Alaska native firms, unlike Rolette. However, the contracting officer states that he did consider it proper to use Cloverdale's 1988 prices, as well as Cloverdale's 1989 unit prices under this solicitation as to those items "new to the FY [Fiscal Year] '89 procurement," for the purpose of determining the reasonableness of Rolette's price. The contracting officer also used a cost estimate compiled by the school system's cook-foreman.

Based on this comparison, Rolette's bid was determined to be unreasonably high and after the Bureau of Indian Affairs (BIA) was unsuccessful in obtaining a reasonable, revised price from Rolette during subsequent negotiations, BIA canceled the IFB and resolicited the requirement on an unrestricted basis. BIA informed Rolette of the cancellation of the IFB by letter in which Rolette's final negotiated price was mentioned, copies of which were mailed to Quality and Cloverdale. Following the receipt of bids on an unrestricted basis, a contract was subsequently awarded to another firm.

Rolette primarily objected to BIA's determination that its bid was unreasonably high and, also, to certain other BIA actions, including BIA's permitting Cloverdale and Quality to obtain bid packages and to submit bids, BIA's opening and consideration of the other firms' bids and BIA's release of Rolette's negotiated price to these other bidders after the IFB had been canceled.

We considered these issues and denied Rolette's protest in all respects. As to Rolette's protest about the presence of the other bidders, we noted that the non-Indian/Alaska Native status of these other bidders was not definitively known until their bids were opened and their legal status for the purpose of this IFB was formally determined from a reading of the "Self-Certification Statement" contained in their bids. Further, we pointed out that Rolette was mistaken in its reliance on certain IFB provisions forbidding the solicitation of offers from "non-Indian businesses enterprises," because those provisions applied only to the award of subcontract(s) by the successful bidder, not to the award of the prime contract for which Rolette bid. Consequently, we concluded that BIA could not be faulted either for giving these companies copies of the IFB or for using some of the prices in Cloverdale's present bid for price comparison purposes. Cf. Saratoga Indus.--  
Reconsideration, B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47,  
where we held that contracting officials may properly

consider "courtesy bids" submitted by ineligible large business concerns in determining the reasonableness of a small business bid submitted in a small business set-aside procurement.

As to Rolette's objection to the release of its final price to its competitors, we noted that the disclosure (which was said to have been inadvertent), while improper, did not prejudice Rolette since there was no indication that Rolette was competitive with the open market at any time.

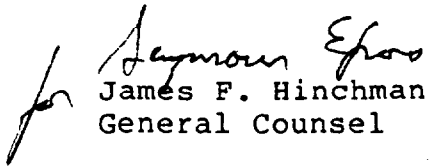
First, we note that in its request for reconsideration Rolette does not even mention the principal holding of our decision, which was that BIA reasonably determined Rolette's price, even as negotiated downward, to be unreasonably high. Rolette does reiterate its objection to the receipt and consideration of the Cloverdale and Quality bids, but Rolette does not show, in any way, that our prior decision on this ground of protest was legally or factually erroneous. Consequently, Rolette's mere disagreement with our conclusions on this issue forms no basis on which to disturb our prior decision. See 4 C.F.R. § 21.12(a) (1988); tg Bauer Assocs., Inc.--Second Request for Reconsideration, B-229831.8, June 21, 1989, 89-1 CPD ¶ \_\_\_\_.

Rolette also complains that our prior decision did not acknowledge Rolette's positions that: (1) the president of Rolette was in fact present at the bid opening contrary to a statement that he was not made by a BIA official in a transmittal letter; and (2) negative inferences about BIA's motives in dealing with Rolette should be drawn because only one copy (of the two copies present in the record) of the January 23, 1989, BIA letter to Quality and Cloverdale shows that these other bidders were informed of Rolette's negotiated price. Rolette suggests that the document was "changed." Neither of these additional grounds for reconsideration affords a basis to disturb our prior decision.

First, the presence, or the absence, of the president of Rolette at the bid opening does not affect, in any way, the propriety of the cancellation of the IFB and the subsequent resolicitation of the requirement. Second, that only one of the two copies of the January 23, 1989, letter shows the disclosure of Rolette's final price does not establish bad faith on the part of BIA since clerical error could account for this discrepancy rather than any failed BIA attempt to conceal, in some way, the disclosure. In any event, Rolette has not questioned our conclusion that it was not prejudiced by the disclosure of its negotiated price since Rolette's

negotiated price was not competitive with open market prices.

Since Rolette has not presented any evidence that our original decision was based on legal or factual error, we deny the request for reconsideration.

 Seymour E. Hinchman  
James F. Hinchman  
General Counsel